

Besides the power of appeal, it is open to Government to revise the orders passed—

- (a) by the Forest Settlement Officer in respect of settling rights under section 14, directing that any other method of providing for the settlement under the section than that adopted be preferentially followed, or directing that commutation under section 15 be substituted ;
- (b) any order passed in appeal. Such revision may take place at any time within five years after the *final* notification has been published^a.

SECTION X.—NEW RIGHTS CANNOT GROW UP IN A RESERVED FOREST.

§ 1.—*Provisions of the Indian Law.*

I must offer some remarks regarding an important provision of the law found in section 22 of the Indian Act (section 22 also of the Burma Act)—

“No right of any description shall be acquired in or over a reserved forest.”

This provision cannot take effect until it is definitely known by the operations of settlement what *are* the respective rights of the State and of private persons, and how they have been adjusted from a given date. That ascertained, the forest is declared “reserved” from the fixed date, and no right which on that date has not been admitted and recorded is held to have any existence. Then it is possible to say that thenceforth no new right can grow up, nor any process of prescriptive growth go on. It is all cut short, so to speak, on the date of declaration.

It is obvious also that this provision can have no meaning except within the definite area indicated by demarcation as the reserved estate.

^a Indian Act, section 21. It will be observed that section 17 also gives a power of revision to the appeal order. Both these sections are not necessary, and the first is omitted in Burma Act.

The Indian Act would probably be interpreted to mean in this respect exactly what the Burma Act expresses.

§ 2.—*Continental Laws.*

All the continental laws contain similar provisions. It is not, however, necessary to go into the specific provisions⁷.

The Indian law excepts the obvious case where the right passes by succession: but then it is not a new right, but an existing (and necessarily settled and recorded) right which passes on from the right-holder to his heir. It is also reserved to the Government to grant a *right* exceptionally; but I know of no case in which this has ever been done.

§ 3.—*Question of Rights to New Comers and increased number of Inhabitants.*

Connected with this subject is, however, a point to which some attention must be given. Very commonly in settling Indian forests, the rights required are by *the inhabitants* of a certain village.

A grazing right will frequently be recorded in the form that such and such a village is to get grazing for so many cows, so many buffaloes, and so many goats, or that such and such a village has the right of taking firewood for so many houses. Such villages may afterwards increase, and additional cattle be brought in, or additional houses be built.

Under the provisions of the Indian law, such additional houses and later settlers could not claim any right; nor can the numbers and quantities fixed at settlement be legally increased, except by an express grant of the local Government⁸.

⁷ For example, the Code Forestier, Art. 62: "No concession will, in future, be made, in State Forests, of any rights of user of any kind, and under any pretext whatsoever."

⁸ This matter has had a greater importance in Europe where rights are dependent, much more on distinct seigniorial grants of ancient date, than is the case in India. Here then the terms of grants have to be considered. Now, supposing a grant has been made to a "commune" as a *body*, every one who has rights as a member of the commune (not merely as a resident or settler) as it may exist at any given time, participates in the right. This point is elaborately discussed in Meaume; and all the different views are given. The *question of the true intention of the grantor* is at the bottom of them. (Meaume, I, note, p. 289).

This discussion is cut short by the German law, which restricts a right granted to a commune (*Gemeinde*) or a village (*Dorfschaft*) to the actual members of the

It may be convenient in this place to notice that while new rights cannot grow up by any process of prescription, &c., Government can by specific grant create such rights. It is, however, very unadvisable to tie the hands of the public authority by granting a right, which, once granted, is irrevocable. When it is desired to make provision for some hard case it is better to grant a "license"⁹ worded so that the Government may at any time revoke or alter the terms. When such a permission (which the French call "*tolérance*") is granted, it should define the number of cattle to be grazed, the kind, the season of grazing, the quantity of wood, and in fact all other particulars exactly the same as would be done in the case of a right regulated for exercise inside the forest.

It should also be remembered that all concessions to extract minor produce, surface minerals, or anything else of the kind, are really temporary and revocable rights while they last, and should, in all cases, be exactly defined, and always declared to be exercisable subject to control of the forest officers, and to be immediately terminable in case any breach of condition occurs.

The French practice in this respect may afford useful suggestions to the Indian forest officer¹⁰. A "*tolérance*," granted for the

community, not to laborers, and residents not being members, and to such number of members only as existed at the date of grant (Eding. pp. 109, 110, and authorities quoted). If it were otherwise, it might come to pass that a forest would be perfectly swamped by the right. A grant to a commune with, perhaps, twenty houses for firewood might grow to one that required the whole coppice yield of an estate.

In India the forest rights rarely or never originate in a grant, from which any intention can be inferred, as to a design to encourage more settlers and so forth. Rights grew up out of a mere long-continued and openly exercised practice of the inhabitants of villages in the vicinity, to go into the forest and graze and get what wood they wanted. Hence the number as found in actual enjoyment of the practice at the time of settlement is the obvious standard. After that new additional rights cannot grow up.

⁹ I have already explained the objections to the term "privilege" which some readers would be disposed to apply in this place.

¹⁰ See *Service Administratif des Chefs de Cantonnement*; par A. Puton (Grosjean, Nancy, 1870), p. 198, &c.

convenience of certain persons, which is not intended to be a fixed right, is conveyed by a written instrument holding good for *nine years*, and stipulating that the concessionaires shall pay a *nominal* rent or charge which prevents the idea of a permanent grant of a right. It can be renewed as often as the authorities please at the close of each ninth year. The Prefect grants these "*tolérance*" with the advice of the Conservators. The conditions attached are—

- (1) that the concession is always revocable at pleasure (and cannot militate against any pre-existing rights of third parties, for which the Government is in no way responsible) ;
- (2) the term of years (nine or some less number) is fixed ;
- (3) the yearly charge is to be paid (as above stated) ;
- (4) the concessionaire is responsible to make good any damage caused in the exercise of his concession ;
- (5) when the concession comes to an end (in whatever way) the grantee engages to restore the locality to its original condition, whenever that is necessary, within a month, or to allow the forest officer to do so and to pay all charges.

The concessionaire signs an agreement that he accepts the terms and will abide by them, and failure to sign this in due time entails cancelment of the concession.

Such temporary concessions most commonly (in France) refer to a right-of-way, permission to use a spring or other water, to take a water channel across forest land and so forth.

In a few places in India leases of bits of forest are sometimes given with right to raise crops for a certain number of seasons conditional on raising in lines between the crops certain trees.

In practice these do not lead to much as a rule. But the plan is also known in France (*concession à charge de repeuplement*)¹; the

¹ Serv. Adm., p. 211.